IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 91 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JITENDRA RAMANLAL SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 91 of 2001

MR MEHUL SHARAD SHAH for Petitioner No. 1

MR KT DAVE APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 21/09/2001

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution, petitioner has challenged order dated October 31, 2000, Annexure B to the petition, passed by the Deputy Commissioner of Police. Zone - V, Ahmedabad City, Ahmedabad, by which he has externed the petitioner

for a period of two years from five districts i.e., Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana and also the order dated January 20, 2001, Annexure D to the petition, passed by the appellate authority confirming the order of externment passed by the externing authority and prayed to quash and set aside both the above mentioned orders.

2. A show cause notice under Section 59 of the Bombay Police Act ('the Act') for short) dated January 19, 2000 was issued to the petitioner in which various allegations were made against him to the effect that he is a strong headed, quarrelsome and aggressive person who has no fear of law and order, picking up quarrel with people and gives threats to kill them, continues his anti social activities by which he is causing physical and financial damage to the people and the people are afraid of filing complaint against him and the activities carried out by him are detrimental to the maintenance of public order. Besides this, four cases were also registered against him with Maninagar Police Station of Ahmedabad City. Therefore, by issuing show cause notice, the petitioner was asked to show cause as to why he should not be externed for a period of two years from the five districts to which reference is made in earlier paragraph of this judgment.

3. The externing authority after considering the evidence adduced before it and the material on record, passed the impugned order of externment dated October 31, 2000 by exercising powers conferred under Section 56 (a) of the Act and externed the petitioner for a period of two years from the above mentioned five districts.

4. Aggrieved by the aforesaid order passed by the externing authority, the petitioner preferred an appeal before the appellate authority, which was dismissed by the appellate authority vide order dated January 20, 2001, Annexure D to the petition, which has given rise to the present petition.

5. Mr. Shah, learned advocate for the petitioner has raised several contentions and tried to convince this Court that the order of externment suffers from various vices much less it is recorded in clear non-application of mind. Besides this, he has also raised the contention that the cases referred to in the show cause notice dated January 19, 2000 are of the years 1994 to 1999 whereas the impugned order of externment was passed on October 31, 2000. Therefore, according to him, even if the last offence registered against the petitioner in the year

1999 is considered as it is registered in the last month of the year 1999, i.e., in December 1999, it can be said that the impugned order of externment was passed ten months after the registration of the last offence against the petitioner. No explanation is forthwith coming as to why the order of externment was passed at the belated stage. Therefore, on the ground of unexplained delay in passing the externment order, the order of externment is required to be quashed.

6. Mr. Shah, learned advocate for the petitioner has further contended that offence registered against the petitioner vide CR No. I-427/97 wherein the accusation is for commission of offences under section 394 of the IPC but the said Section is deleted by the investigating officer. Therefore, on this ground also the impugned order of externment requires to be set aside. He, therefore, urged that the orders passed by the externing authority and the appellate authority both may be quashed and set aside and the petition may be allowed.

7. Mr. K.T. Dave, learned APP opposed the petition and contended that the petitioner is a strong headed person and his activities are detrimental to the society at large. As he is involved in four criminal cases, the externing authority has rightly passed the order externing the petitioner for a period of two years. He, therefore, urged to reject the petition.

8. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the orders passed by the externing authority as well as the appellate authority and also other papers annexed to the petition.

9. It is true that the externing authority has in its notice dated January 19, 2000 issued to the petitioner asked him to show cause as to why the order of externment externing him for a period of two years from the five districts mentioned in the show cause notice should not be passed. On having perusal of the said notice, the externing authority has mentioned about four cases registered against the petitioner which are of the years 1994, 1997, 1998 and 1999. So far as offence registered in the year 1999 is concerned, the month of registration of the offence is not mentioned. Therefore, even if we take that the said offence was registered in the last month of the year, i.e., December 1999, it can be said that the externing authority has passed the order of externment after a period of ten months as the order of externment was passed on October 31, 2000. Therefore

there is no manner of doubt that the externing authority has passed the order of externment after abnormal delay which is not explained by the externing authority either in the externment order or by filing reply affidavit. Therefore, on the ground of unexplained delay in passing the impugned order of externment, the order of externment requires to be quashed and set aside.

10. Similar question arose before this Court in the case of Balvantsingh v. Deputy Commissioner of Police, 1999 (1) GLH 207. In the said case this Court has held that last undisclosed witness was examined on February 21, 1997 and the externment order was passed on October 1, 1997 and therefore as delay of about nine months in passing the impugned order was not explained by the externing authority, the order of externment was quashed.

11. Applying the said principles to the facts of the present case, at the risk of repetition, be it stated that the impugned order of externment was passed after ten months from the registration of the last offence. Therefore, the order passed by the externing authority externing the petitioner and the order passed by the appellate authority confirming the order of externing authority both are rendered invalid and illegal and deserve to be quashed and set aside.

12. For the foregoing reasons, the impugned order of externment passed by the externing authority at Annexure B and the order passed by the appellate authority at Annexure D confirming the externment order, both are quashed and set aside. Rule is made absolute. Direct service is permitted.

(A.M. Kapadia, J.)

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